IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 380 of 2003
in
SPECIAL CIVIL APPLICATION No 2105 of 2003
with
CIVIL APPLICATION No 2498 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIEF ENGINEER, G E B
Versus
ARROW TECHNO CAST (GUJ.) PRIVATE LTD.

Appearance:
1. LETTERS PATENT APPEAL No. 380 of 2003
MS LILU K BHAYA for Appellant No.
MR YN RAVANI for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Admit. Mr YN Ravani, learned counsel appearing for the respondent-Company waives service of notice of admission.

In the facts and circumstances of the case, we have heard the learned counsel for the appellant-GEB as well as the learned counsel for the respondent-original petitioner for final disposal of the appeal and are accordingly disposing of this appeal finally on merits.

2. What is challenged in this appeal under Clause 15 of the Letters Patent is the judgment dated 4.3.2003 rendered by the learned Single Judge allowing Special Civil Application No.2015 of 2003 by which the learned Single Judge remanded the matter to the Appellate Committee of the Gujarat Electricity Board for recalculation of the amount of revised bill issued by the GEB on account of detection of theft of electrical energy.

3. The respondent-Company is a consumer of the Gujarat Electricity Board with contracted load of 250 KVA. On 17.9.2002, the installation of the respondent was checked by the vigilance squad of the GEB. It was found that the respondent was committing theft of electrical energy. The electricity connection was immediately disconnected and the meter was removed and sent for laboratory inspection. The GEB sent supplementary bill of Rs.1,13,54,064/- for the period from 27.4.2002 to 17.9.2002. The respondent preferred appeal before the Appellate Committee of the GEB and pending hearing of the appeal deposited 15% of the disputed bill amount. After hearing the representative of the respondent, the Appellate Committee of the Board decided the appeal by its judgment dated 27.1.2003 (Annexure A) holding that the respondent herein had committed theft of electrical energy, but the Appellate Committee partly allowed the appeal by directing the officials of the GEB to revise the said bill by taking parameter "M" as 213.75, parameter "H" as 120 X 24 hours and shift factor "C" as 0.4. The Committee further directed that the units recorded in the meter from 27th April to 17th September, 2002 shall be excluded from the revised chargeable units. On the basis of the said order, the GEB issued revised bill dated 21.2.2003 (Annexure B) for an amount of Rs.26,61,928.80ps.

4. Aggrieved by the aforesaid decision of the Appellate Committee, the respondent herein filed the above numbered writ petition before the learned Single Judge of this Court. The appellant-Board appeared before the learned Single Judge on caveat. It appears that at the first hearing of the petition, the learned Single Judge took up the matter for final disposal and allowed the petition and remanded the matter to the Appellate Committee with further direction that the connection given to the respondent herein shall not be disconnected and that the bill dated 21.2.2003 (Annexure B) shall not be recovered till the decision is taken by the Appellate Committee.

Aggrieved by the aforesaid order of the learned Single Judge, the GEB has moved this Court in appeal.

5. Ms Lilu Bhaya, learned counsel for the appellant-Board has submitted that the Appellate Committee is an expert body constituted to hear the appeals under Condition No.34 of the Conditions and Miscellaneous Charges for Supply of Electrical Energy framed by the GEB in exercise of the powers conferred by Section 49 of the Electricity (Supply) Act, 1948. The Appellate Committee consists of five members out of whom four are technical and one legal member of the rank of a retired District Judge. It is submitted that when such an expert committee had rendered its decision, the learned Single Judge exercising jurisdiction under Article 226 of the Constitution could not sit in appeal over the decision of the Appellate Committee. Still the learned Single Judge has remanded the matter to the Appellate Committee.

Secondly, it is submitted that even though it is an order of remand, the learned Single Judge could not have passed such an order without first giving the finding that the decision of the Appellate Committee was contrary to law. The order of remand could not have been passed merely after making general observations to the effect that there was some miscalculation in the assessment or valuation of the energy consumed or abstracted and that certain documents were not considered by the Appellate Committee.

6. On the other hand, Mr YN Ravani, learned counsel for the respondent-original petitioner-consumer has opposed the appeal and submitted that the order of the learned Single Judge is merely an order of remand. Therefore, as per the settled legal position, the

Appellate Court should not interfere with such an order. Strong reliance has been placed on the decisions of the Apex Court in Babulal Nagar vs. Shree Synthetics Ltd. AIR 1984 SC 1164 and Muniyallappa vs. BM Krishnamurthy AIR 1992 SC 212.

On merits, it is contended that the argument advanced on behalf of the present respondent-consumer that the consumer was running the foundry for only one shift and not for two shifts and, therefore, the load factor "C" was required to be applied at 0.2 and not 0.4 had rightly commended to the learned Single Judge and, therefore also, the order of remand was justified.

It is also submitted that the Appellate Committee had also erred in not considering that at the time of original billing the bills were prepared on the basis of 213 KVA which was the minimum load for which the respondent-consumer was liable to pay and, therefore, the Appellate Committee ought to have directed the officials to revise the bill on that basis.

The learned Single Judge has given a finding that 12 documents produced by the respondent-consumer were not taken into consideration by the Appellate Committee and this finding was given in view of the averments made in the petition and, therefore also, the order of remand was justified.

7. Having heard the learned counsel for the parties, we are of the view that there is considerable substance in the submissions urged on behalf of the appellant-Board for the reasons stated hereinafter.

8. At the outset we may deal with the contention raised by Mr Ravani for the respondent-consumer that the order under appeal is one of remand and, therefore, this Court should not interfere with the same in appeal. Having carefully gone through the order of the learned Single Judge we are unable to find any finding or even any observation to the effect that the finding given by the Appellate Committee on a particular issue was contrary to law or was perverse. The judgment of the Appellate Committee is quite elaborate and has dealt with all the contentions raised on behalf of the consumer. For instance, when the consumer raised the contention that it was operating the factory for only one shift i.e. for 8 hours and, therefore, load factor 0.2 should be applied, the Appellate Committee set out and dealt with the said issue in the following terms:-

"The next contention taken by the appellant in the written submission is that they were running their factory for only one shift of 8 hours and during this period, they were running their factory for 4 to 4-1/2 hours. Therefore, factor "C" should be revised to 0.2.

For deciding factor "C", several parameters are required to be considered, such as parameter "M", the manner and method in which dishonest abstraction of electric energy was committed, the consumption pattern and type of industry. All these parameters indicate that the appellant was running his factory at the average shift factor of 0.4. Therefore, parameter "C" is now revised to 0.4."
(it was earlier taken at 0.6 in the supplementary bill challenged before the Appellate Committee)

In respect of the aforesaid finding given by the Appellate Committee, the learned Single Judge has not given any categorical finding as to what was lacking in this finding of the Appellate Committee or how the finding was contrary to law or was perverse. The learned Single Judge has merely made the following observations:-

"In the present case, even there may be a formula calculating the energy on the basis of the category but it appears if the factory is running only on one shift for 8 hrs. then the charge cannot be for 24 hrs. and the multiplication by 24 hrs. cannot be permitted."

The learned Single Judge has not at all dislodged the reasoning of the Appellate Committee but the language in terms of "ifs and buts" cannot be sufficient for striking down the decision of an Appellate Committee in writ jurisdiction under Article 226 of the Constitution.

9. However, Mr Ravani for the respondent-consumer made an attempt to support the order of the learned Single Judge by referring to certain documents like the Factory Inspector's certificate to show that the factory was running only in one shift.

Such a document cannot be seen or read in isolation. The finding given by the Appellate Committee, which is not disturbed by the learned Single Judge, is that the respondent-consumer had committed theft of electrical energy by certain contrivances in such a manner that electricity supply was being taken without

the same passing through the meter. A consumer who has committed theft in such a manner may not be expected to keep true and correct account of his entire actual production. A consumer who commits theft of electrical energy may not correctly maintain the record such as stock registers of raw materials and finished products or other registers required to be maintained under the other Legislations. Hence, merely a certificate of the Factory Inspector certifying that the foundry was running in one shift cannot be accepted as the gospel truth.

10. On the other hand, the statutory Conditions and Miscellaneous Charges for Supply of Electrical Energy under which the Appellate Committee has rendered its decision specifically lay down the parameters and how they are to be calculated. The relevant part of Condition No.34 reads as under:-

"34. Payment for energy dishonestly used or abstracted or maliciously wasted or diverted. -

Where it is established to the satisfaction of Board's officer that a consumer has dishonestly abstracted, used, consumed or maliciously caused energy to be wasted, or diverted, the value of the electrical energy thus abstracted, used, consumed, wasted or diverted shall be assessed by such officer for the period and in the manner specified hereinbelow and the value of energy so assessed shall be collected by including the same in the next bill or by a separate bill. Such amount shall always be deemed to be the arrears of electricity dues for all purposes.

Provided that the value of the electricity energy so assessed to have been abstracted, used, consumer, wasted or diverted shall be subject to review by the Appellate Authority on the representation/appeal being filed by the consumer in the manner stated hereinbelow.

Provided further that ... .

Assessment

1. In case of LT consumers:

....

2. In case of HT consumers:

In case of HT consumers taking supply at high

tension is detected to have committed theft of energy, the actual maximum demand shall be considered an equivalent to 75% of the total connected load of the consumer at the time of inspection subject to a minimum of the contracted demand and the energy consumption shall be assessed as under:-

Assessed units per month = M x H x C
Where M = Demand in KW (KVA x PF)
H = Nos. of Hours in month
C = Load Factor

Category of HT consumers	Load Factor
... .	.....
Foundry	60%
Steel Rolling Mills	60%
....	....

Note:-

The "Actual maximum demand" in Kilowatt shall be computed from various equipments rated in Kilowatt directly and from equipments rated in horse power by the standard engineering formula. The "actual maximum demand in KVA" shall be computed from "actual maximum demand in KW by dividing the later by the actual average power factor for the period mentioned hereinbelow under head "period of Assessment".

The demand so assessed (in KVA) in excess of the recorded demand shall be charged at two times the applicable tariff rates for "billing demand in excess of contract demand" for each month's assessment.

The consumption assessed in the manner aforesaid shall be reduced by the consumption recorded by the meter and charged at the appropriate tariff rates. The remaining consumption shall be charged at 2.5 times the applicable tariff rates under the head "Energy charges" and "Fuel Cost Adjustment charges".

...."

There are certain other provisions of the said Condition No.34 including the provision that the assessment of energy under Clause 34 shall be for the past six months from the date of detection or actual period from the date of the previous Installation Checking within six months prior to the date of detection under consideration. We are not concerned with the details of the said provision as admittedly the calculation of energy of which theft is committed has been made for five months prior to the date of detection and no controversy has been raised regarding the duration of the said period.

11. A perusal of the aforesaid statutory provisions indicates that for Foundry and Steel Rolling Mills, the load factor is required to be taken at 60% i.e. 0.6. In view of the contention raised by the consumer before the Appellate Committee that such a load factor should not be taken as 0.6 i.e. three shifts, the Appellate Committee has given a concession to the respondent-consumer and applied the load factor of 0.4, that is, by making calculations on the basis that the industry was operating in two shifts. The Appellate Committee has observed that for deciding factor "C" several parameters are required to be considered, such as parameter "M", the manner and method in which dishonest abstraction of electric energy was committed, the consumption pattern and type of industry, and after considering these parameters, the Appellate Committee has come to the conclusion that the appellant was running the factory at the average shift factor of 0.4 i.e. for two shifts a day. Such a finding of fact is clearly based on the relevant materials and it cannot be said that the Appellate Committee had taken into consideration any irrelevant factors. As already stated earlier, for an industry, which has committed theft of electrical energy, it may not be unreasonable to infer that such an industry may also not maintain its record under the other Legislations correctly and, therefore, in a petition under Article 226 of the Constitution, the inference drawn by the Appellate Committee and the finding given by the Appellate Committee that the load factor required to be applied was 0.4 cannot be said to be contrary to law or perverse so as to warrant interference of this Court under Article 226 of the Constitution.

12. Similarly, the other argument advanced on behalf of the consumer was set out and dealt with by the Appellate Committee as under:-

"The last contention raised by the appellant in the written submission is that a mistake is committed in considering the demand charges charged in the Sp. bill. From the demand charges, the recorded demand was excluded and on that penal charge was imposed. They had already paid the demand charge on recorded demand and therefore, the respondent Board is not entitled to make double demand.

There is no substance in the contention raised by the appellant. From the chargeable demand, recorded demand is already excluded and only the remaining demand is charged at the penal rate. The contention of the appellant, is therefore, rejected."

Even while concluding the Appellate Committee has directed in its judgment that the officials of the GEB shall exclude the units recorded in the meter from 27th April to 17th September, 2002 from the revised chargeable units. The Appellate Committee has, thus, ensured that the consumer is not required to pay the penal charge for the units for which it was already charged previously.

13. Before concluding, we would like to point out that in Kiran Industries, Mehsana vs. Gujarat Electricity Board, 1995 (2) GLH 1, a Division Bench of this Court has already held that when the decision of the Appellate Committee is challenged, Civil Court may examine the legality and validity of the bill but the Court should not grant interim stay against disconnection of electricity supply for nonpayment of the bill, and that if at all interim stay against disconnection is to be granted, it should not be granted without payment of the disputed bill issued pursuant to the decision of the Appellate Committee unless there are cogent and convincing reasons on the basis of exceptional circumstances brought on record. The respondent-consumer herein has not been able to give any cogent and convincing reasons or any exceptional circumstances to justify a departure from the above rule and, therefore, we are of the view that while it may be open to the consumer like the respondent-industry to challenge the decision of the Appellate Committee before a Civil Court, there could be no interim stay against disconnection without payment of the disputed bill prepared pursuant to the decision of the Appellate Committee.

14. Similarly, in Hyderabad Vanaspathi vs. A.P. State Electricity Board 1998 (4) SCC 470, the Apex Court

has upheld the validity of Clause 39 of the Conditions of Supply of Electricity to consumers notified by the Andhra Pradesh State Electricity Board in exercise of powers under Section 49 of the Electricity (Supply) Act, 1948, which Clause 39 was similar to Condition No.34 applicable to the appellant-GEB and its consumers.

15. The last contention urged on behalf of the respondent-consumer was that the GEB has committed illegality in charging interest for a period of 110 days commencing from the date when the initial supplementary bill was issued and that interest could not have been charged for the period prior to the date of the decision of the Appellate Committee. The learned counsel for the respondent-consumer states that the Appellate Committee has not decided the grievance against charging of interest for the excess period and that the decision is also contrary to Condition No.34.

The contention cannot be accepted. A consumer who has committed theft of electrical energy is required to pay the charges as per the statutory formula contained in Condition No.34 and since the Board was wrongfully deprived of the said charges, the appellant-Board was justified in calculating interest of the entire period of 110 days i.e. for the period from due date for payment of supplementary bill till the date of decision of the Appellate Committee and thereafter till the date when the actual payment is made.

Since the supplementary bill was issued on 11.10.2002 and since the demand against the respondent-consumer is confined to the amount which is ultimately found to be legally recoverable from the respondent-consumer, that is, revised from Rs.1,13,54,064/- to Rs.26 lacs and odd, no fault can be found with the GEB in levying interest for the period from 11.10.2002 till the date of decision of the Appellate Committee.

16. Accordingly, the Letters Patent Appeal is allowed. The judgment and order of the learned Single Judge dated 4.3.2003 is quashed and set aside. Consequently, the Special Civil Application is dismissed.

17. At this stage, Mr Ravani, learned counsel for the respondent-consumer prays that the respondent- original petitioner may be granted some time to pay the revised bill and that as against the demand of Rs.26,61,928.80, the respondent has already paid a sum of Rs.10 lacs. Hence, for the remaining amount of approx. Rs.17 lacs

some time is prayed for.

Ms Bhaya, learned counsel for the GEB states that the amount was required to be paid within 30 days from the date of receipt of the bill.

18. In the facts and circumstances of the case, we direct that if the respondent-consumer pays the remaining amount of the revised bill dated 21.2.2003 (Annexure B) in four equal monthly installments, first monthly installment commencing from 14th July, 2003, and if the respondent-consumer continues to pay the current electricity charges, the GEB shall not disconnect the electricity supply to the respondent-consumer's premises. This direction shall remain operative if the respondent-consumer files an undertaking on affidavit on or before 14th July, 2003.

It is clarified that in case of any default in payment of any monthly installment or default in payment of current electricity charges for any month, it will be open to the GEB to exercise its powers to disconnect the electricity supply.

19. In view of the aforesaid order, the Civil Application for stay does not survive and the same is accordingly disposed of.

(KSHITIJ R. VYAS, J.)

(M.S.SHAH, J.)

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